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EXAMINER	
MULVANEY, ELIZABETH EVANS	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/539,362
Filing Date: June 15, 2005
Appellant(s): KURT ET AL.

Ralph Kurt
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/2/10 appealing from the Office action mailed 3/1/10.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-7, 9-11, 13-17, and 19-23 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,033,752	Suzuki	3-2000
2003/0190551	Aoshima	10-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 9-11, 13-14, 16-17 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0190551.

The reference discloses a recording medium comprising a substrate, a reflective layer, a dielectric layer, a two-layered recording layer, a dielectric layer and a cover layer. The reflective layer and first dielectric layer are equivalent to applicant's "additional" layers. The first dielectric layer can also be equivalent to applicant's "spacer" layer. See Figure 3 and explanation thereof. The thickness of the recording layers falls within applicant's disclosed range, i.e. applicant relies upon an integer multiple of a quarter wavelength of a second electromagnetic radiation to describe the a distance between a reflective surface of the information layer and a reflecting surface of at least one additional layer. This definition opens up a huge range of possible thickness values for not only the information layers, but the "additional" layers. As applicant's point out in the Appeal, the thickness value of the combined first and second recording layers disclosed in the '551 reference may be up to 100nm. This would meet the thickness limitation based upon a read beam of 400nm. Applicant does not specify the read beam wavelength. Nor does applicant specify the integer which, in fact, could be zero. Further, applicant does not specify which surface is the "reflecting surface of said at least one additional layer", i.e. is it the surface of the metal layer, the surface of the layer adjacent the information layer, etc.? Therefore, as applicant's definition of the "distance" or thickness value is a broad range, the medium as disclosed in the '551 reference would be capable of meeting this definition and, therefore, would be capable of achieving the interference effect claimed. The DVD is recorded upon with a laser which mixes the two layer of the recording layer to form recording marks. Reading is performed by detecting a difference in reflection of the recorded and unrecorded portions. See [0120].

Claims 2-7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0190551 as applied to claim 1 above, and further in view of US 6,033,752.

The '551 reference discloses the medium and method as described in the above rejection. It is recognized that the reference does not disclose the claimed combination of alloying materials. However, the '752 reference shows that these combinations, such as Bi-Sn or In-Sn are known. See cols. 6-7. Therefore, it would have been obvious to one of ordinary skill in the art to substitute the alloy combination of the '752 reference for the alloy combination of the '551 reference. The substitution of one known recording material for another would yield predictable results. Further, the '752 reference show that it is known to utilized double-sided media in increase the recording capacity.

(10) Response to Arguments

Applicant argues that the D1 reference (US 2003/0190551) does not provide any teaching or suggestion of determining a distance between a reflecting surface of the information layer and a reflecting surface of said at least one additional layer that is adjusted to be an integer multiple of a quarter wavelength of a second electromagnetic radiation. Applicant states that the previous Office Action infers that it would be inherent that the thicknesses may be selected to satisfy the elements recited in the claims.

This is not the position taken by the examiner in the previous Office Action. As stated, the possible range of thicknesses for the multiple layers disclosed in the reference and the possible range of thickness for the layers claimed overlap. The layers are formed of the same materials and can be of the same total thickness and, therefore, would be capable of achieving the claimed properties. While applicant may be claiming the parameters of the medium in a different way, i.e. the total

thickness of the sub-layers is dependent upon the read wavelength, the reference still meets the limitations. At a 400nm read wavelength, the total thickness of applicant's sub-layers could be 100nm. This is met by the reference. Further, applicant does not specify the "reflecting surface" of the at least one additional layer. That is to say, if the reflecting surface is the surface of the substrate, the distance definition would include all of the layers between the substrate and the outer surface of the information layer. If the reflecting surface is the surface of the metal layer, the distance would include all layers between the surface of the metal layer and the outer surface of the information layer. Therefore, depending on which definition of the "reflecting surface" is used will result in very different values. Due to the possibility of using different wavelengths, different integer multiples, and different reflecting surfaces (the "distance" definition could be interpreted to include the thickness of the dielectric layer, reflective layer, etc), the possible thickness (distance) range is large and overlaps the thickness ranges disclosed in the '551 reference.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Elizabeth Mulvaney/

Primary Examiner

Art Unit 1785

Conferees:

/Mark Ruthkosky/

Supervisory Patent Examiner, Art Unit 1785

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Quality Assurance Specialist, TC 1700